DOCUMENT RESUME

ED 032 644 EA 002 542

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Critical Issues in Negotiations Legislation. Professional Negotiations Pamphlet Number Three.

National Association of Secondary School Principals, Washington, D.C.
Pub Date 69
Note-40p.
Available from-The National Assn. of Secondary School Principals, 1201 Sixteenth St., N.W., Washington, D.C. 20036 (Single copy $1.00, quantity discounts).
EDRS Price MF-$0.25 HC Not Available from EDRS.
Descriptors-Administrator Role, Arbitration, *Collective Negotiation, Educational Policy, *Guidelines, Negotiation Impasses, *Principals, *State Legislation, *Teacher Associations, Teacher Strikes, Teacher Welfare

This pamphlet contains the National Association of Secondary School Principals' (NASSP) viewpoint on the following critical issues to be considered prior to drafting State negotiation legislation: (1) The role of the school principal in negotiation, (2) the preferred procedures for designation of the bargaining agent, (3) a statutory timetable for demands, (4) criteria for negotiable items, (5) procedures for negotiation, (6) procedures for impasse resolutions, and (7) the permissibility of strikes. The appendix includes a copy of Iowa Senate Bill 237 which closely approximates the NASSP criteria for desirable negotiation legislation. Related documents are EA 002 507 and EA 002 541. (JH)

EDO 32644

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Critical Issues in Negotiations Legislation

by Robert L. Ackerly and W. Stanfield Johnson

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EA 002 542

Professional Negotiations Pamphlet Number Three

from

THE NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS
1201 Sixteenth Street, N.W., Washington, D. C. 20036

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Foreword

The 1965 NASSP booklet, *The Principal's Role in Collective Negotiations Between Teachers and School Boards,* emphasized the desirability of each state passing legislation to permit school boards to negotiate with teachers' organizations. Experience gained since that time has proved the wisdom of that statement and has demonstrated that strong, effective, and comprehensive state negotiations legislation is most important in bringing about and maintaining sound personnel relationships in America's school systems.

Because principals have had little to say about the writing of negotiations statutes, and because no segment of the education profession is more affected by the laws that are passed, NASSP arranged for this monograph to be written on some critical issues in negotiations legislation. In it, the authors attempt to convince principals, teachers, superintendents, boards of education, and legislators that recognition must be given to all groups within the certificated profession; that the statute must guarantee the timely, meaningful, and orderly conduct of negotiations, and that the whole process will not be nullified by failure to provide for effective resolution of impasse situations.

In this booklet, the third in NASSP's current negotiation series, authors Ackerly and Johnson focus sharply on eight major issues which face educators when they develop bills for presentation to state legislatures or when they assist in revising current statutes.

We commend this booklet and its recommendations to all concerned individuals and groups, so

that when collective negotiations statutes are enacted and signed into law, they will successfully accomplish the intended purposes of guaranteeing the smooth, uninterrupted, and efficient operation of the nation's school systems. We know of no appropriate way to accomplish this other than through the full participation of their professional staffs.

The Association expresses its gratitude to Mr. Robert Ackerly and Mr. W. Stanfield Johnson, members of NASSP's Washington law firm of Sellers, Conner & Cuneo for preparing this thought-provoking manuscript. We are grateful also to the members of our own Committee on the Status and Welfare of Secondary School Administrators for reacting to the manuscript and suggesting revisions.

We hope that the thoughts expressed in this booklet will have a significant and lasting effect upon the legislation proposed and enacted in the field of collective negotiations.

Owen B. Kiernan
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THE INCREASING momentum of the collective negotiations movement among professional people employed in the schools has produced a demand for legislation establishing legal rules and procedures through which such negotiations can take place and disputes in the schools can be resolved. To date, this need has resulted in comprehensive legislation in fewer than a third of the 50 states. Some states have prohibited strikes by professional employees in the schools without providing at the same time procedures by which disputes may be resolved and inequities eliminated. Most states have no laws yet covering this subject.

In states where comprehensive legislation has been approved, the laws have reflected the influences which have shaped them—namely, teacher groups and the public employer. Because their role in representing the administrative viewpoint was not clear, the principal and his supervisory colleagues have had little influence in the writing of such laws. Too often they have been uninformed about and unprepared to deal with the problems that follow the introduction of collective negotiations in a school system.

Most existing legislation has been based on an application of concepts borrowed from the industrial labor movement—picturing the school labor situation as a polarized opposition of employer (board of education and superintendent) and employees (teachers). The other groups in the school system, particularly the principals as top building management, have in most states not been granted special recognition in existing legislation.

What this means for the school principal is that he has a major task before him. In most states negotiation legislation affecting public education undoubtedly will be proposed within the next few years. In others, amendment of existing legislation may be necessary. The principal must be knowledgeable with respect to such legislation.

Legislation sets the ground rules for negotiations and assigns areas of jurisdiction to the respective interests in the schools. No negotiator, however experienced and skillful, can overcome legislation which deprives the group he represents of bargaining power. No interest, however worthy, can be satisfactorily presented where there is no procedure for its advocates to be heard. No school system can operate continuously and effectively where there is inadequate legal machinery for the adjustment of differences among all groups and interests in the school. No school can be properly managed in the absence of such legal procedures. Carefully drafted legislation on the subject of negotiations is the foundation for a peaceful, orderly, and equitable solution of present-day employment problems in any school system. The following are judged to be the critical issues to be considered in drafting legislation.

Issue 1. What Role for the School Principal in Negotiations?

The most immediate concern of the principal is his place in the negotiating picture. Consequently, an important guideline for judging negotiations legislation is how it deals with the principal. Is he

required by the law to be a part of the public employer's negotiating team? Or is he thrust into the bargaining unit of the teachers' bargaining group? Is he permitted or required to form his own bargaining group, and, if so, what other persons may join with him? Is he granted bargaining rights parallel to those accorded by the law to teachers?

Since teachers have been the moving force for collective bargaining in education, some of the early statutes force the principal into teacher bargaining units, although at times their interests may differ and in part their roles may conflict. Such legislation denies to principals any independent bargaining power from the outset. Legislation should recognize the distinct interests of principals and other supervisors by permitting them to bargain independently.

The reasons for this guarantee must be obvious: the teachers' bargaining movement has not restricted its demands to economic issues. Often demands are addressed to issues which directly affect the decision-making authority and responsibilities of the principal in his building with no corresponding reduction of accountability. Demands are often made which, if satisfied, would alter the working conditions of the principal to the point of making ineffective his efforts to provide a proper educational climate in the building. Demands have even been made that the principal should be elected by the teachers or be subject to removal by their vote. Given the nature of these demands, and since these issues are often the subject of collective negotiations, it is grossly unfair to subject the principal to

a compulsory statutory assignment to the teachers' bargaining group, where he will be outnumbered and where the predominant interests are sometimes in conflict with his own.

Legislation which forces the principal into the teachers' bargaining unit is thus inimical to the principal's interests. There are two alternatives. First, legislation may exclude principals and other supervisory employees from the teachers' bargaining unit.* This may be accomplished, as it has been in one state, by a provision stating:

> Except where established practice, prior agreement, or special circumstances dictate the contrary, supervisors having the power to hire, discharge, discipline, or to effectively recommend the same, shall not have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership.

It may be done simply by declaring that:

> An organization which represents a classroom teacher unit is inappropriate to represent administrators or supervisors in negotiation. An organization composed solely of administrators and supervisors is the appropriate group to represent administrators in negotiations.

Although this approach limits the principals' options, it is a limitation which serves as a protection from the pressures of teacher groups for inclusion of principals in their bargaining unit. Furthermore, if the principals are to have no options in this

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* This alternative is recommended by the NASSP Committee on the Status and Welfare of Secondary School Administrators.

regard, it is better that the law require that their interests be separately represented.

A second alternative is to allow principals the *choice* of being represented by the teachers' agent, represented separately in an independent negotiation group, or elect not to negotiate their welfare benefits at all, by aligning with the administration's negotiating team. This may be accomplished, once the legislation makes it clear that principals have available the basic bargaining rights permitted to school employees by the statute, by the further declaration that:

> Nothing in this chapter is intended to require the inclusion or exclusion of principals, assistant principals, and other supervisory employees in or from school system bargaining units which include teachers. A bargaining unit of such supervisory employees, separate from the unit including teachers, shall be formed upon the request of a majority of the teaching employees or of supervisory employees. The recognition of a supervisory unit shall not preclude the participation of such employees as representatives of the board of education in its negotiating with the teacher unit.

This option approach might also be accomplished in the way that Connecticut legislators drafted their statute, by permitting the division of a unit into "positions requiring a teaching or special services certificate" and "positions requiring an administrative or supervisory certificate."

It is crucial that negotiations legislation either provide a statutory declaration of the principals' independence from the teachers' bargaining unit or

arm the principals with the privileges of declaring their independence of the teachers' bargaining representative. From the public's point of view, these protections are essential to protect the principal, as the source of order and authority in the school, from being rendered ineffective by the bargaining power of non-supervisory employees. From the public's point of view, such provisions are necessary to protect the very nature of the principalship as the office they hold accountable for the operation of the school. It follows that a clear declaration of the role of principals is essential.

Issue 2. What Are the Preferred Procedures for Designation of the Bargaining Agent?

The procedure for designation of the bargaining agent is not as important an issue as others; nonetheless, it is a necessary part of any legislation and involves problems which require comment—some of which may be troublesome to the principal.

Generally, legislatures have, with sound reasons, preferred the approach which permits selection of an agent by petition. This procedure eliminates the need for an election unless a petition is filed by a rival group or a reasonable request for an election is made by management. Elections should be by secret ballot. The elected bargaining units should represent the employees of the specific employing agency—in most cases the school district; statewide bargaining is not being practiced, at least at this point. There should be an impartial state agency to conduct the election, rule on issues such

as qualifications to vote, and arbitrate disputes over representation within the unit. Provision should be made for subsequent elections when the representative nature of a negotiating unit is legitimately challenged.

The designation of the bargaining agent presents a particular problem for school principals. First, if principals are to be grouped with other supervisory or administrative personnel, it must be determined (probably by the impartial state agency or commission) who should be included in such a separate group. An appropriate definition of such administrative and supervisory personnel is:

> . . . Board of Education employees who are on an administrative or supervisory salary schedule, who supervise other employees, and who can effectively recommend the hiring, retention, dismissal, assignment, or discipline of teachers, but shall not include district superintendents or their deputies.

Such a definition could properly be included in legislation or adopted by the impartial state agency charged with administration of the negotiation law.

Issue 3. Should There Be a Statutory Timetable for Demands?

Many of the existing statutes include a requirement that demands involving appropriations be made on a timely basis. In such statutes the designated bargaining agent is required to serve notice of demands a set period before the last date on which money can be appropriated. This is a

practical necessity, since many demands have budgetary implications.

Such a requirement may be established by a provision such as the following:

> Whenever wages, rates of pay, or any other matter requiring appropriation of money by any employing agency (municipal, district, or county) are included as a matter of employee's bargaining with a public employer, the bargaining agent must serve written notice of such request for collective bargaining on the public employer at least 120 days before the conclusion of the current fiscal operating budget.

Most states have selected the 120-day period as the time needed to complete the bargaining process prior to the deadline for appropriations. Whether this will prove sufficient will be determined by experience. Some states have also found it necessary to create a strict schedule for negotiations, by requiring that each step (negotiation, mediation, arbitration) be accomplished within a prescribed period, in order to insure that the 120-day period will be adequate.

This notice requirement should not be treated lightly by those interpreting the negotiations law. In the private sector, a technical requirement for notice might possibly be disregarded because of hardship or unfairness. In the public sector, however, there exists the overriding problem of the procedures of the legislative authorities, sometimes designated by the state constitution, a circumstance which results from the fact that teachers and principals are public employees.

Issue 4. What Should Be the Proper Subjects of Negotiation?

It is a matter of major importance to principals that proper limitations be imposed upon subjects of negotiation authorized by statute. Principals should enthusiastically endorse bargaining rights on issues involving the economic and physical welfare of employees and conditions which affect that welfare. Issues not related to employee welfare but involving school and educational policies are not proper subjects for bargaining. Neither the public nor the principal should permit educational policies (such as curriculum, textbook selection, assignment practices, discipline, and the like) to be the subject of a power confrontation between the employer and the teachers' bargaining agent.

That is not to say that teachers should not exercize their professional right to participate in decision making on these issues, through formal councils with appropriate safeguards and guarantees. Teachers should be insured the right to express their views, but decisions should be made on the basis of professional skill, experience, and the results of research, rather than bargaining strength.

Unfortunately, most of the existing legislation permits the broadest interpretation of what is negotiable. The scope of permitted negotiation is frequently defined as "wages, hours, and conditions of employment." Phrases such as "conditions of employment" will inevitably be loosely interpreted by teachers' organizations to include everything they wish to include. This means that subjects which

directly affect the principal's authority and prerogatives become bargaining issues. Thus the management of the school may be hashed out over the bargaining table—often in sessions between teacher groups and the school board. One can see the gravity of this problem where principals are not permitted representation independent of the teachers' bargaining unit.

In some states subjects appropriate for bargaining are explicitly cited in the definition of the scope of negotiations. In the State of Washington, employees are granted the *right* to bargain over—

> proposed school policies relating to, but not limited to, curriculum, text book selection, in-service training, student teaching programs, personnel hiring, assignment practices, leaves of absence, salaries and salary schedules and non-instructional duties.

A recent proposal in Utah would have provided the right to negotiate "terms and conditions of professional service and other matters of mutual concern." These are provisions which ultimately will be regretted. No sound public policy can justifiably support the casting of educational policies on the bargaining table.

Principals should advocate limiting the scope of negotiations. They should advocate limitations not merely on the basis of the necessity to protect the principalship from employee demands which would undermine and jeopardize it, but also on the basis of the public's significant need to have education and school policies determined on the enlightened basis of professional judgment and research, rather

than by a power struggle between two bargaining agencies.

Some state laws limit the scope of negotiations. The Oregon law restricts negotiations to "matters of salaries and related economic policies affecting professional services." The Minnesota law defines "conditions of professional services" as "economic aspects relating to terms of employment, but does not mean educational policies." In Minnesota, the right of any teacher to the individual "expression or communication of a view, grievance, complaint, or opinion on any matter to the Board" is specifically protected, although the scope of collective bargaining is restricted. Proposed legislation in Maine states that "public employers of teachers need not . . . negotiate with respect to educational policies."

These limiting provisions are not without some ambiguity: the term "educational policy" is subject to diverse interpretations. Without question, the definition of the scope of negotiations is one of the most difficult in drafting negotiations legislation. Perhaps the best drafting device is to list certain subjects that typify what is *not* subject to negotiation, such as curriculum, textbook selection, school discipline, hiring and assignment practices.

The fundamental criterion—essential to the principal and the public alike—is that some reasonable limitations be stated in order that the entire range of public educational problems and policies will not be settled by the power plays and compromises characteristic of the bargaining process.

Issue 5. What Should Be the Procedures for Negotiation?

The basic provision of any negotiations legislation should be one which grants to public school employees the right to bargain collectively through appropriate bargaining agents and imposes upon the school board the obligation to bargain with such agents in good faith. Other provisions of the negotiations law are either the details of this basic provision or terms thought necessary because of the consequences of the basic provision.

Obviously, very significant details are furnished by the provisions defining the obligation to bargain collectively. A suitable definition of this mutual obligation is provided by the following language:

> (a) To meet at reasonable times; (b) to meet within 10 days (or other specified time) after receipt of written notice from the other party requesting a meeting for collective bargaining purposes, provided the parties have not otherwise agreed in a prior written contract; (c) to confer and negotiate in good faith with respect to wages, hours, physical working conditions, and contract grievance arbitration; (d) to execute in writing any agreements arrived at, the term of any such agreement to be subject to negotiation but shall not exceed three years (or other specified time); and (e) to participate in good faith in the mediation, fact finding, and arbitration procedures required by law.

This type of definition provides substance to the employee's right to negotiate collectively and defines the extent of the school board's obligations,

thus providing a substantive framework for negotiations.

It is desirable that legislation require that any agreement be made public. A publication requirement is in the clear interest of the public, which should have the right to know what its representative, the school board, is agreeing to. A publication requirement is of great importance to principals, who have found themselves inexplicably unadvised of agreements which affect and, in some cases, dispose of authority and prerogatives which are essential to the conduct of their duties. In some instances, principals have been unable to obtain copies of agreements between the teachers' bargaining agent and the school board, even when they have been represented by the teachers' agent and even though they are charged with management responsibilities involving grievance procedures defined by the agreement.

Some existing laws have publication requirements (or at least allow publication) where there have been findings of fact or agreements resulting from mediation or arbitration. These publication requirements are desirable, but the principle is equally applicable where there is a voluntary agreement not involving mediation or arbitration. Thus, a requirement that any written agreement be published or made available to the public is an important criterion for good negotiations legislation, both from the point of view of the public and of the principal.

Issue 6. What Are Workable Procedures for Mediation and Arbitration?

In the event that the negotiating parties are unable to reach an agreement after a period of negotiation, it is vitally important that negotiations legislation provide procedures by which any differences remaining between them can be resolved. Statutes establishing legal procedures obviously are not needed to cover situations where the parties readily agree; legal machinery is needed to insure the resolution of unresolved disputes and impasses.

Where the parties are unable to reach an agreement, the law should require that the disagreement be submitted to mediators appointed by the impartial state agency created to administer the negotiations law. The parties should be required to meet with the mediators and provide such information as they may require. Of course, the mediation services of the state agency should also be available whenever the parties jointly request such services.

In the event mediation fails to develop agreement between the parties, either party should be permitted to submit the unresolved issue or issues to an impartial arbitrator or board of arbitrators. The procedure for selection of the arbitrators may take any one of a number of forms. The usual approach is for each party to the dispute to designate one member of a board of arbitrators, and the arbitrators so selected to select the third, who acts as chairman. It may be appropriate for the state agency to maintain a list of expert, impartial arbi-

trators, but this list should not be in any way binding upon the parties. Should the arbitrators selected by the parties be unable to select a third, it might be desirable to require the parties to take the matter to court, where a judge would designate the third arbitrator. Similarly, the parties should be allowed recourse to the courts to compel arbitration in the event either party refuses to arbitrate as required by law.

Throughout the course of arbitration, the impartial state agency should provide whatever assistance is properly required by the arbitrators. The negotiation statute should provide the state agency with a subpoena power which may be used to compel witnesses to testify at hearings or to compel the production of records for the arbitrators.

Interested parties other than those directly involved in the dispute should be afforded the right to present their views at the hearing of the issues before the arbitrators. From the principals' point of view, this may often be an important right. Where the teachers' bargaining organization and the superintendent are before the arbitrators, there may well be issues between the parties which involve the functions, activities, and authority of principals. In all fairness, persons whose interests are being negotiated should be permitted to present and argue their views. In order to exclude petitions and demonstrations by groups whose interests are not directly involved, the right of hearing before the arbitrators should be granted only to those whose conditions of employment or professional

services are affected by the dispute between the parties to the arbitration.

Issue 7. Should Arbitration Be Binding or Advisory?

The most difficult substantive issue at stake in the drafting of negotiations legislation is whether arbitration, such as is described in the preceding section, should be binding or merely advisory. Conscientious legislators are faced with this profound dilemma: While their major objective is to create a procedure by which employment disputes in the schools may be equitably resolved in an orderly fashion, their ability to construct machinery to deal with the impasse situation is impeded by the constitutional proposition that a legislative or taxing authority cannot delegate its appropriation responsibility. Thus, in most states it is constitutionally impermissible to have arbitrators bind the public employer where the controversy involves the expenditure of money. None of the existing statutes attempts to bind the public employer to arbitrators' resolutions of controversies over salaries, pensions, and insurance.

With respect to issues not involving appropriations, some of the states having comprehensive laws do make the arbitrators' decisions binding. For example, the Rhode Island law provides that:

> The decision of the arbitrator shall be made public and shall be binding upon the certified public school teachers and their representative and the school committee on all matters not involving the expenditure of money.

To the extent that the arbitration is binding, judicial review should be permitted, although restricted, as it is in Rhode Island, to the objection that the arbitrators' decision "was procured by fraud or that it violates the law."

Principals should support the concept of binding arbitration where it may be permitted constitutionally. If the public policy which supports negotiations legislation has the objective of resolving school employment disputes through legal machinery, it would be futile to create extensive machinery for negotiating and formalizing voluntary agreements while leaving unanswered the difficult question of how to resolve the impasse situation. Thus, legislation which makes arbitration on non-money matters binding is founded on sound public policy.

For similar reasons, it is disappointing that no provisions have been devised to deal with the constitutional impediment to conclusive resolution of disputes involving financial expenditures. Because no legislation has attempted to circumvent this constitutional taboo, one hesitates to suggest that there *may* be an answer which would permit conclusive resolution of an impasse without disturbing the essence of the constitutional allocation of power. But there does seem to be a possibility which should be suggested so that it might at least be considered by legislators.

A provision such as the following might serve public policy purposes without offending constitutional requirements:

> The decision of the arbitrators on matters involving the expenditure of money shall be binding upon the employees and their agent, but shall not be binding upon the public school employer; *provided,* however, that, should the public school employer choose not to accept the decision of the arbitrator, the public school employer shall submit the issue of accepting or rejecting the arbitrators' decision to a referendum of citizens entitled to vote in the constituency of the agency responsible for appropriating the funds in question. If the result of the referendum is in favor of the arbitrators' decision, such decision shall become binding upon the public school employer.*

This referendum procedure is a novel proposition, but it is the only one we are aware of which permits the ultimate resolution of an impasse through arbitration without violating constitutional restrictions. Since the ultimate constitutional power rests with the public, constitutional doctrine can hardly be offended by statutory provisions which encourage decision making by the citizenry.

A referendum is a time-consuming procedure not often used apart from general elections, when many issues are regularly submitted to the electorate. The suggestion of a special referendum will thus be viewed with suspicion on both sides. Yet it provides an alternate to the strike which may be more successful than merely increasing penalties for a strike, as the New York legislature recently did.

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* Because of a firm belief that such a referendum may create more problems than it solves and because it may provide the opening for other matters, such as educational policy, to be decided by referendum, the Committee on the Status and Welfare of Secondary School Administrators does not support this concept.

Arbitration of new contract clauses is only an extension of our judicial system. When issues such as levying taxes must be resolved by an elected body and that body refuses to raise sufficient funds for negotiated wage levels, the impasse is solid. Severe penalties for a strike will embitter public employees. A forum empowered to act must be found. The electorate may be the only answer.

Similarly, public school employees must recognize that their ultimate remedy may be a political one. Because they are public employees, they must recognize that the ultimate judge of their demands may be the public. This statutory procedure for final last-resort adjudication of demands by the people themselves could produce more satisfactory conclusions than laws which fail altogether to resolve the impasse situation.

Issue 8. Should Strikes Be Permitted?

In most states, the major concern of the public and its representatives in the legislature has been to avoid disruption of public education by prohibiting strikes by public school employees. As a result, most (though not all) of the state negotiations laws contain a strike ban and specify other prohibited acts. The sanctions for violation vary from penalties for leaders of the bargaining organization (such as fines, loss of bargaining status, loss of dues-withholding services) to penalties directed at the striking public school employee himself (such as loss of tenure or loss of pension rights). Injunctions against strikes are usually available under the exisitng laws, and person in viola-

tion of court orders are, of course, subject to penalties for contempt of court.

Despite the sometimes severe nature of the sanctions against striking, strike bans have not been effective. Serious strikes have taken place in states with laws prohibiting strikes and providing for sanctions against strikers and their leaders. A number of factors have provoked this disregard of law. In some instances, bargaining agents and leaders have found it in their interest to suffer the consequences of the strike, exploiting the short imprisonments or payment of fines to make themselves martyrs to the cause. In other instances, there has been no disposition on the part of administrative officers to enforce the sanctions permitted by law.

The major factor has been the basic shortcoming in most of the existing legislation—its failure to provide effective legal machinery for the resolution of impasses. In the many states where the law prohibits strikes but fails to make arbitration binding, the practical result is that the law binds employees to the arbitrators' findings (or worse, the employer's offer), but fails to impose any restrictions on the discretion of the public school employer. This is an inherently inequitable and one-sided proposition. Thus, much existing legislation, perhaps unwittingly, restricts employees in a way that deprives them of bargaining power, while at the same time declaring that the public school employer is free to reject not only the employees' demands, but also the reasonable recommendations

of impartial arbitrators. With no real restraints imposed on the employer by law and with employees deprived of their ultimate strike weapon, there exists no practical compulsion for the employer to bargain in good faith.

The solution to this unfortunate and unfair situation is not necessarily to abandon the strike ban. It is the view of principals, as well as the public, that disruption of education because of employment disputes should be avoided. Principals deplore the use of the strike as a weapon to resolve impasses because of the possible harm to children and youth, not to mention the long-lingering bad feelings between professional staff, administration, and board of education and loss of confidence by the public. The solution lies in the fulfillment of the fundamental purpose of the legislation—the establishment of strong legal machinery for the resolution of employment disputes. By some means, legislation must provide a fair balance against the strike ban imposed on employees, without contravening constitutional doctrines. Not only might such a balance be an effective means of achieving a law which fairly equalizes bargaining power, but it would encourage respect for laws prohibiting strikes.

Conclusions

What has been discussed in the preceding sections are important guidelines for negotiations legislation. We hope that principals, with the assistance of the National Association of Secondary School Principals, will use the substantive con-

cepts outlined herein for their guidance in carefully evaluating present and proposed legislation in their particular states.

Perhaps it is appropriate at this point to emphasize the coincidence of the interests of principals and the public. Principals share with the public a desire for effective machinery for the resolution of employment problems in the schools, without disruption of good order in the schools as well as without disruption of the process of education through strikes and other disturbances. The substantive provisions recommended in the preceding sections all seek to serve these basic objectives. With this in mind, and with the fact that principals do not always have the political power that comes from great numbers, principals can gain much strength from realizing the harmony of their views with the public welfare.

Appendix

Iowa Senate Bill 237 is reprinted here as an example of a negotiations bill which approaches, in an acceptable way, nearly every criterion which NASSP believes to be important for the welfare of children, the public, and all certificated employees, including principals. There is no intent to convince the reader that this bill is a "model" for states to copy when drafting negotiations bills. No one model is possible which would be appropriate to all the diverse school systems in the United States. Careful study of this bill will, however, reveal how educational groups in one state have faced the complex issues of negotiations in a manner suitable to their requirements. At the time of publication this bill was still under consideration in the Iowa legislature.

Legislative Proposal

An Act relating to certificated public school employees, providing for professional negotiation between employee associations and school boards, establishing orderly procedures for the resolution of persistent disagreements and other matters.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. In the interest of improved personnel management of professional educators, it is the policy of this state to recognize their right to form, join and assist professional educators' associations and to confer, consult, bargain, and negotiate with school boards over wages and other terms and conditions of professional service. It is the policy of this state to avoid or settle disputes by establishing procedures which will facilitate agreement by orderly means.

Sec. 2. When used in this Act:

1. "Professional educator" means any employee of a public school system who is required in connection with such employment to hold a certificate issued by the state board of public instruction.

2. "Public school system" means any school district, area school system under chapter two hundred eighty A (280A) of the Code, county school system, merged county school system or county board of education, and any other public school corporation or political subdivision of the state designated to operate a public school, but not including the state board of regents or its institutions.

3. "School board" means the board of directors, governing body or the body charged by law with the responsibility for conducting the affairs of a particular public school system.

4. "Professional educators' association" means any lawful association or organization in which certificated public school employees participate which exists for the purpose in whole or in part of engaging in professional negotiation with school boards.

5. "Professional negotiation" means meeting, bargaining and negotiating in good faith with respect to wages and terms and conditions of employment.

6. "Good faith" includes, but is not limited to, the obligation of the school board and the professional educators' association to meet at reasonable times and to confer in a sincere effort to reach agreement upon those matters being negotiated or otherwise being discussed, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

7. "Strike" means a willful, concerted refusal by professional educators to perform services during a period for which they are under contract to work.

8. "Appropriate negotiating unit" means a unit:

a. Consisting of all of the professional educators of a particular public school system other than administrative or supervisory professional educators; or

b. Consisting of all of the administrative and supervisory professional educators of a particular public school system other than the superintendent and assistant superintendent.

9. "Administrative" and "supervisory" professional

educators means those individuals having authority, in the interest of the employer, to hire, transfer, suspend, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment. In addition to the foregoing, such terms shall also include persons whose primary duties are the performance of general administrative functions for the school system.

Sec. 3. Professional educators shall have and shall be protected in the exercise of the right to form, join or assist any professional educators' association, to engage in professional negotiating with school boards through representatives of their own choosing as provided herein, and except as otherwise prohibited by this Act, to engage in other activities, individually or in concert, for the purpose of professional negotiation or otherwise establishing, maintaining or improving conditions of professional service and other educational standards, free from interference, restraint or coercion. Membership in any association shall not be required as a condition of employment or retention of employment.

Sec. 4. A professional educators' association designated for the purposes of professional negotiation by the majority of the professional educators in an appropriate negotiating unit in a public school system shall be the exclusive representative of all the professional educators in such unit for such purposes. However, a school board may listen to and consider the views

of any individual professional educator or group of educators on any matter which involves the interpretation or application of existing agreements or policies to his or their terms and conditions of service, as long as the exclusive representative has an opportunity to be present and participate in such proceedings.

Sec. 5.

1. Any professional educators' association may file a request with a school board alleging that a majority of the professional educators in an appropriate unit in a public school system governed by the school board has designated such professional educators' association as their representative for the purposes of professional negotiation and asking the school board to recognize such association as the exclusive representative of all the professional educators in such unit.

2. Such request shall be accompanied by the names and addresses of the officers of such association and by petitions s' ned within sixty days before such request is filed by a majority of the professional educators in such unit stating in substance that the signers designate such professional educators' association as their exclusive representative for the purposes of professional negotiation. The school board shall immediately cause notice of such request to be posted on a bulletin board in each school in the system.

3. Such request for recognition shall be granted by the school board unless:

a. The school board has a good faith doubt as to whether the association actually has majority support; or

b. Some other professional educators' association

files with the school board within ten calendar days after the posting of notice of the original request a competing claim of majority support, and submits as evidence of its majority support petitions signed within sixty days before such claim is filed by at least thirty percent of the professional educators in the appropriate negotiating unit stating in substance that the signers designate such professional educators' association as their exclusive representative for the purposes of professional negotiation; or,

c. The board of education has, within the previous three years, recognized a professional educators' association other than the petitioner as the exclusive representative of any of the professional educators included in the unit described in the petition.

4. Recognition when granted pursuant to the foregoing procedure or as a result of an election shall be effective for a period of thirty-six months thereafter. Recognition may be renewed for like periods upon the request of the exclusive representative filed with the school board not less than two nor more than five months prior to its expiration. The procedure for renewal of exclusive recognition shall be the same as upon a request for initial recognition.

5. If for the reasons specified in subparagraphs a and b of subsection three (3) of section five (5) of this Act, the school board refuses to grant recognition within fifteen days following the request, then within thirty days following such refusal a secret ballot election shall be held to determine which, if any, professional educators' organization shall be recognized as the exclusive representative of the professional educators

in an appropriate negotiating unit for the purpose of professional negotiation.

6. Within ten days following the school board's refusal to grant recognition, representatives of the school board and the petitioning professional educators' organization or organizations shall meet to designate by agreement, if possible, a referee having residence within the school district to conduct such election. In the event that the parties cannot agree upon the designation of such referee, they shall immediately request the appointment of such referee by a judge of the district court for the county in which the principal offices of the school board are located. The rules and regulations for the conduct of such election shall be determined by the unanimous agreement of the representatives of the interested parties, but in the absence of such agreement any disputed provision shall be determined by the referee. The expenses of the election shall be paid by the school system. The choice of "no representation" shall be included on the original ballot. In an election in which none of the choices on the ballot receives a majority, a second election shall be conducted with the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the original election. The referee shall certify to the school board and other interested professional educators' associations the results of the election. The professional educators' association receiving the votes of a majority of those casting valid ballots shall be certified as the exclusive representative of all of the professional educators in an appropriate negotiating unit.

Sec. 6.

1. No school board shall refuse to meet, bargain, or negotiate in good faith with the exclusive representative of its professional educators designated in accordance with this Act. It is the mutual obligation of the school board and such exclusive representative to meet within ten days after receipt of a written request from either party and to meet, bargain and negotiate in good faith with respect to all matters relating to the wages, terms and conditions of employment of such professional educators and to cause any agreement resulting from such negotiations to be reduced to a written contract, if requested by either party to the negotiation, provided, however, that no such contract shall exceed the term of three years.

2. In any professional negotiation meeting, the exclusive representative shall be represented by not more than five of its members and the school board shall be represented by not more than five of its members or supervisory or administrative personnel designated by the school board. This provision shall not preclude either party from having consultants present at such negotiation meetings but such consultants shall not act as representatives of the parties.

Sec. 7. On educational matters other than those described in section two (2), subsection five (5), hereof, the administrative staff shall involve professional educators of the public school system in study, planning, research and recommendations leading to decision making.

Failing such involvement, the professional educators

shall have the right to present their views directly to the school board.

Nothing in this section shall be construed to be the subject matter of professional negotiation as described herein.

Sec. 8.

1. If by March first in any year in which a negotiated contract between the parties is to become effective, the parties have not reached agreement upon any item subject to negotiation, either party may declare that a deadlock prevails and call for mediation. In such event, the parties shall by mutual agreement appoint a mediator for the purpose of assisting them in reconciling their differences and resolving the controversy on mutually acceptable terms. If the parties are unable to agree upon a mediator who is a resident of the public school system within a period of three days after the declaration of deadlock, then each party shall designate a representative resident within the public school system and these representatives shall endeavor to agree upon a mediator. If these representatives are unable to arrive at agreement after a period of three days, then the parties shall make joint application to a judge of the district court for the county in which the principal offices of the school board are located for the appointment of such mediator. The court shall appoint within five days such mediator, who shall be a resident of the judicial district of the court. The mediator so appointed shall meet with the parties or their representatives, or both, and shall take such steps as he may deem appropriate to remove the causes of deadlock and persuade the parties to resolve their differences and

effect a mutually acceptable agreement. The cost of the services of the mediator shall be shared equally between the parties.

2. If the mediator is unable to effect a settlement of the controversy within ten days after his appointment, then at the request of either party, a fact finding commission shall be established. The fact finding commission shall consist of one representative designated by each party and a mutually acceptable disinterested third person who shall serve as chairman. If the parties are unable to agree upon such third person, then the representative designated by each party shall endeavor to agree upon such third person. If the two representatives are unable to reach agreement after three days, then the parties shall make joint application to a judge of the district court for the county in which the principal offices of the school board are located for the appointment of such third person. The court shall make such appointment within a period of five days after request. The fact finding commission may establish dates and places of hearings, which hearings may be public or private as the commission determines, shall have the authority to subpoena witnesses and may consider statements of the exclusive representative, the school board, superintendent of schools and such other persons or organizations as it may deem advisable. Such commission shall report to the school board and the exclusive representative its written findings of fact and recommendations for a resolution of the dispute within twenty days from the date of appointment. Its recommendations shall be advisory only and shall not be binding upon the parties.

Within fifteen days after receipt of such report, the school board and the exclusive representative shall inform the commission whether the dispute has been resolved and if not, which recommendations it accepts and which recommendations it rejects. The commission shall make its report and the report of each party public.

3. The designated representative of each party to the fact finding commission shall be a resident of the public school system and shall not be a person involved in any official capacity or relationship to the public school system. The third member of the fact finding commission shall be a resident of the judicial district in which the principal offices of the school board of the involved public school system are located and shall be a person who is not involved in any official capacity or relationship to the public school system.

Sec. 9. A school board and the exclusive representative who enter into an agreement covering wages, terms and conditions of employment may include in such agreement procedures for final and binding settlement and disposition of such disputes as shall arise involving the interpretation, application or violation of such agreement or of established policy or practice of the school board.

Sec. 10.

1. It shall be unlawful for a school board, school board member, public school system, or any person acting on behalf of any of the foregoing:

a. To interfere with, restrain or coerce professional educators in the exercise of their rights guaranteed by

this Act; or to impose reprisals or to discriminate against employees for exercising their rights hereunder.

b. To refuse to meet, bargain or negotiate in good faith as required by this Act.

c. To deny reasonable access to the premises, use of bulletin boards or other means of communication to professional educators.

2. It shall be unlawful for a professional educators' association, or a professional educator or any person acting on behalf of any of the foregoing:

a. To interfere with, restrain or coerce professional educators in the exercise of the rights guaranteed by this Act. However, this paragraph shall not impair the right of an association to prescribe its own rules with respect to acquisition or retention of membership herein.

b. To induce, instigate, authorize, ratify or participate in a strike against a public school system or engage in any concerted refusal to render service as required by contract.

c. To discriminate with regard to the terms or conditions of membership because of race, color, creed or national origin.

d. To refuse to meet, bargain or negotiate in good faith as required herein.

e. To compel or coerce any person to join or retain membership in a professional educators' association or to sign a petition designating a professional educators' association as his representative.

3. Any person, professional educators' association or school board aggrieved by any violation of this section may bring, in addition to any remedy available in this

Act, an action in the district court for the county in which the principal office of the school board of the public school system involved is located. The court in such case may grant such relief, including damages, injunction and other remedies as may be appropriate at law or in equity, against any professional educators' association, any professional educator, public school system, school board, school board member, or any person acting on behalf of any of the foregoing, or any combination of the foregoing. The public school system expressly consents to be sued for this purpose and no defendant may raise the defense of sovereign immunity. Any organization or association representing employees, whether incorporated or not, may be sued as an entity.

4. Nothing in this Act shall prohibit an employer from discharging or otherwise disciplining an employee who participates in activities prohibited by subsection two (2), paragraph b, of this section.

5. Any professional educators' association which violates the provisions of subsection two (2) of this section may be denied by the school board the right to be certified as an exclusive representative for a period of twenty-four months following the date of such violation. However, such remedy shall not be available to the public school system if it has been guilty of any violation of subsection one (1) of this section.

Sec. 11. Whenever any other provisions of law are inconsistent with the provisions of this Act, the provisions of this Act shall govern.

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